

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANTS: Jonjo B. Evans; Lorena L. Evans; Troy A.
Evans

CASE 40A-0100-R-2022
40A 204470-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 40A 204470-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claim did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 40A 204470-00 appeared in the Basin 40A Preliminary Decree as a claim for stock drinking directly from Halfbreed Creek in Section 1, T7N, R25E, Musselshell County.¹ The claim received the following issue remarks:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 10/29/2015 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LORENA L EVANS, HUETTA A BLOOMDAHL, AND ROCHELLE A HALVORSON.
THE PLACE OF USE MAY BE INCOMPLETE. IT MAY INCLUDE THE SWSW SEC 8 TWP 7N RGE 26E MUSSELSHELL CO TOO.
THE POINT OF DIVERSION APPEARS TO BE INCOMPLETE. THE POINT OF DIVERSION APPEARS TO INCLUDE THE SWSW SEC 8 TWP 7N RGE 26E MUSSELSHELL CO.

2. The Court ordered potential owners Lorena L. Evans, Huetta A. Bloomdahl, and Rochelle A. Halvorson to file an ownership update with the DNRC if they received an ownership interest in claim 40A 204470-00.

3. On April 8, 2023, the DNRC processed an ownership update, which changed ownership of the right from Willa Dale Evans to Lorena Evans, Jonjo Evans, and Troy Evans.

3. The SWSW of Section 8, T7N, R26E, Musselshell County was listed on the Statement of Claim as a place of use. However, the same legal land description was not included as a point of diversion. Therefore, the DNRC removed the SWSW of Section 8, T7N, R26E Musselshell County from the claim during their initial review.

4. On April 24, 2023, Claimant Lorena Evans filed a statement that cattle water from the creek in the SWSW of Section 8, T7N, R26E Musselshell County.

¹ The point of diversion was decreed as the entirety of Section 1, T7N, R25E. The place of use was also decreed as the entirety of Section 1, T7N, R25E, however it was broken into two legal land descriptions – one for the E2 of Section 1 and one for the W2 of Section 1. Because these legal land descriptions cover the entirety of Section 1 and livestock direct from source claims typically have matching points of diversion and places of use, the two decreed places of use will be combined into one legal land description that matches the decreed point of diversion – Section 1, T7N, R25E.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. The potential ownership issue remark served its notice purpose.
2. The point of diversion and place of use issue remarks overcome the prima facie status of the claim. The evidence provided by Lorena Evans and available in the claim file shows the historical point of diversion and place of use include the SWSW of Section 8, T7N, R26E.

RECOMMENDATIONS

1. The SWSW of Section 8, T7N, R26E should be added as a point of diversion and place of use.

2. The issue remarks should be removed from the claim abstract.

A post decree abstract of the water right claim is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jonjo B Evans
Lorena L Evans
Troy A Evans
4300 US Hwy 87 S
Roundup, MT 59072-6536

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 204470-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LORENA L EVANS
4300 US HWY 87 S
ROUNDUP, MT 59072 6536

JONJO B EVANS
4300 US HIGHWAY 87 S
ROUNDUP, MT 59072 6536

TROY A EVANS
4300 US HIGHWAY 87 S
ROUNDUP, MT 59072 6536

Priority Date: DECEMBER 31, 1880

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: HALFBREED CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			1	7N	25E	MUSSELSHELL

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SWSW	8	7N	26E	MUSSELSHELL
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				1	7N	25E	MUSSELSHELL
2			SWSW	8	7N	26E	MUSSELSHELL